IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RUSTI LENA SIMPSON,   )
)
        Plaintiff,   )
)
v.   )   Case No. CIV-10-1093-D
)
TURAN KAYA and Y & Z   )
TRANSPORTATION CORPORATION,   )
)
        Defendants.   )

O R D E R

Before the Court is Plaintiff's Motion for Default Judgment [Doc. No. 46]. Despite diligent

efforts, Plaintiff has been unable to obtain personal service on Defendant Turan Kaya, who was

previously served by publication. By her Motion she seeks a judgment by default pursuant to Fed.

R. Civ. P. 55 "in the amount of $100,000 for actual damages." *See* Pl.'s Motion, ¶ 9. Defendant

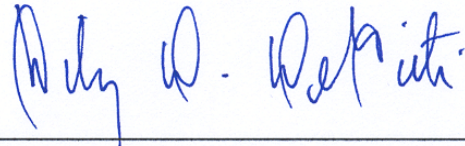Y&Z Transportation Corporation opposes the Motion, which is fully briefed and at issue.

Plaintiff is correct that Defendant Kaya's failure to answer or defend this case entitles her

to an entry of default, and the Clerk will be directed to enter Defendant Kaya's default pursuant to

Fed. R. Civ. P. 55(a). However, Plaintiff has not complied with the Servicemembers Civil Relief

Act, 50 App. U.S.C. § 521, or LCvR55.1 of the Local Civil Rules, which provides: "No application

for a default judgment shall be entertained absent an affidavit in compliance with [the Act]."

In addition, Plaintiff seeks damages for personal injuries, and a hearing would be needed to

determine the amount of her damages, pursuant to Fed. R. Civ. P. 55(b)(2). Because Defendant

Y&Z Transportation Corporation has stipulated to *respondeat superior* liability for Defendant

Kaya's conduct if negligence is found, and because a jury trial has been demanded, the amount of

Plaintiff's damages, if any, will be the subject of a jury trial. Accordingly, the Court agrees with

Defendant Y&Z Transportation Corporation that an entry of judgment against Defendant Kaya at this time would be premature.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Default Judgment [Doc. No. 46] is DENIED, but the Clerk is directed to issue an entry of default against Defendant Turan Kaya.

IT IS SO ORDERED this 8th day of August, 2012.

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TIMOTHY D. DeGIUSTI
UNITED STATES DISTRICT JUDGE

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